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No. 07-988

In the Supreme Court of the United States

RAFAEL DIAZ-RAMOS, PETITIONER

v.

HYUNDAI MOTOR COMPANY AND HYUNDAI AMERICAN TECHNICAL CENTER, INC., RESPONDENTS

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The First Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the First Circuit misapplied Puerto Rico law in concluding that Puerto Rico's consumer class-action law does not provide an independent private cause of action for class suits alleging deceptive trade practices, where an individual cause of action alleging such practices is expressly barred by statute and the class-action law does not purport to modify it.

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INTRODUCTION

The petition, for all its rhetoric about the *Erie* doctrine and judicial "nullification" of state law, seeks nothing more than a third attempt to persuade a federal court to adopt the petitioner's interpretation of a Puerto Rico law that could be definitively construed at any time by the Puerto Rico courts. Petitioner's attempt to re-litigate a single issue of state consumer-protection law does not merit the use of the Court's certiorari jurisdiction.

In any event, as the First Circuit held, the interpretation petitioner seeks is implausible. Petitioner argues that Puerto Rico's Consumer Class Action Act, which is similar to Fed. R. Civ. P. 23, of its *own* force creates a private right of action for deceptive trade practices, even though the Puerto Rico law that makes such practices unlawful—the Puerto Rico Antitrust Act—expressly excludes "deceptive practices in trade or commerce" from the private cause of action it creates for other antitrust violations. As the First Circuit recognized, it would be anomalous, at best, for a federal court to hold, without any clear statutory warrant, that a local *procedural* statute creates a private right of action that is expressly denied by the underlying substantive statute.

There is, therefore, no need for this Court to second-guess the First Circuit's eminently reasonable judgment, which, again, the Puerto Rico Supreme Court can easily correct in another case if it believes the First Circuit got it wrong. Indeed, having *elected* to file his suit in federal court rather than the Puerto Rico courts, petitioner is hardly in a position to complain about the federal courts' reluctance to "push the envelope" of Puerto Rico law.

STATEMENT OF THE CASE

Petitioner's lawsuit is an attempt to impose state law liability on automobile recalls conducted in compliance with federal law. In 1998 and 2002, Respondent Hyundai Motor Company ("Hyundai") launched recall campaigns for the 1995-1997 Hyundai Accent to remedy potential suspension problems that could result from road-salt-related corrosion. Because of the uniquely road-salt-related nature of the problem, the recalls were limited to states in the northern "salt belt" region designated by the National Highway Traffic Safety Administration ("NHTSA"). Pet. App. 11a. It is undisputed that both recalls were conducted in compliance with applicable NHTSA regulations.

1. Petitioner Rafael Diaz-Ramos ("petitioner" or "Diaz") is a citizen of Puerto Rico who claims to own a 1995 Hyundai Accent of the type implicated by the recalls, but whose car was not included in the recalls because it was never located in the salt-belt region. Diaz's lawsuit challenges what he claims is the "unfair trade practice of excluding the consumers in Puerto Rico from 'recalls' intended to remedy corrosion-related defects in Hyundai's vehicles." Amended Complaint ¶ 2 (J.A. at 1).[1]

The core of his complaint is that the "exclusion" of Puerto Rico from the regional "salt-belt" recall—a practice authorized by federal law—was somehow wrongful: he variously characterizes the regional recall as "unfair," "exclusionary," "scientifically un-

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[1] The District Court dismissed petitioner's claims against Respondent Hyundai American Technical Center for lack of jurisdiction, and Diaz did not appeal that portion of the court's order. Hyundai Motor Company is the only remaining respondent.

sound," "unjustified," and "unreasonable." Amended Complaint ¶¶ 2, 3, 57, 58, 66 (J.A. at 1, 10, 12). The class of consumers he seeks to represent includes other citizens of Puerto Rico who own Hyundai cars (none of which were "salt-belt" cars) and whose safety he alleges "is being jeopardized by Hyundai for not including Puerto Rico in the safety recalls that have been made in other so-called salt-belt states." Amended Complaint ¶ 81 (J.A. at 15).

2. Rather than file in the local Puerto Rico courts, Diaz filed an amended complaint in federal district court "on behalf of himself and all other persons and entities similarly situated in Puerto Rico, members of a consumer plaintiff class" pursuant to Puerto Rico's consumer class action law, 32 P.R. Laws Ann. § 3341-44, alleging violation of Puerto Rico's deceptive trade practices law, 10 P.R. Laws. Ann. § 259. Amended Complaint ¶ 88 (J.A. at 17). Hyundai filed a motion to dismiss all of Diaz's claims, including his claims based on Puerto Rico's Antitrust Act, Motor Vehicle Act, Consumer Class Action Act, and common-law tort, for failure to state a claim under Federal Rule 12(b)(6). The District Court entered judgment dismissing all of Diaz's claims against Hyundai for failure to state a claim. Pet. App. 11a-14a.

Diaz appealed, alleging only that the District Court erred in dismissing his claims under the Antitrust Act and Consumer Class Action Act. Following full briefing and oral argument, the First Circuit affirmed the dismissal of Diaz's claims. Interpreting Puerto Rico law, it held that "[i]n light of the explicit statutory language, longstanding precedent regarding class actions, legislative history, and established principles of statutory interpretation," no "private right of action exists" to support Diaz's claims. Pet.

App. 1a-2a. Diaz timely filed a petition for rehearing, which was denied on September 24, 2007, and this petition followed.

REASONS FOR DENYING THE PETITION

The petition asks this Court to exercise its discretionary certiorari jurisdiction to review a relatively minor question of Puerto Rico class-action law, based upon spurious allegations of *Erie* violations and "nullification" of state law. But petitioner's characterization of the Puerto Rico laws at issue is unsupported by the statutes themselves or any other authority. At its heart, this is an ordinary merits appeal grasping for an extraordinary writ—and it is wrong on the merits. The petition satisfies none of this Court's criteria for certiorari, and it should be denied.

I. Petitioner's Claims of *Erie* Error And Federal "Nullification" of State Law Are Spurious.

Diaz devotes the majority of his petition to arguing the merits of the First Circuit's decision. But his arguments that the First Circuit violated *Erie* and "nullified" state law are fanciful, and present no issues warranting this Court's review.

A. Diaz's *Erie* Argument Is Misguided Because The First Circuit's Decision Was Based Squarely On Puerto Rico Law.

Diaz's claim of an *Erie* violation is based upon his assertion that the First Circuit improperly relied on *federal* decisional law to conclude that the Puerto Rico CCAA "is merely 'procedural'" and does not create a private cause of action. Pet. 19-20; *see Erie Ry. Co. v. Tompkins*, 304 U.S. 64 (1938) (stating that "[e]xcept in matters governed by the Federal Consti-

tution or by acts of Congress, the law to be applied in any case is the law of the state"). But *Erie* is wholly irrelevant here, because the court of appeals quite obviously based its conclusion on its analysis of Puerto Rico law.

In its decision, the First Circuit expressly considered "the specified sections . . . of the Antitrust Act," and the "legislative history of the CCAA," as well as "established principles of statutory construction." Pet. App. 6a-7a. Its review of authorities construing Fed. R. Civ. P. 23 and its state equivalents—none of which has ever been construed to create substantive rights—merely confirmed by analogy what the court's analysis of state law showed: that the CCAA is a procedural mechanism facilitating class actions to vindicate existing consumer rights, and not itself a source of additional substantive rights. *See* Pet. App. 5a-6a.

Because the First Circuit properly based its conclusion on Puerto Rico law, *Erie* and its progeny are irrelevant. The petition appears to invoke them solely to cloak its merits arguments about the correct interpretation of Puerto Rico law in the vestments of constitutional error. But there is no *Erie* issue here that is worthy of certiorari review; indeed, there is no *Erie* issue here at all.

B. A Federal Court's Interpretation Of State Law Does Not Constitute "Nullification" Of That Law, Especially Where State Courts Remain Free To Supersede The Federal Interpretation.

Acknowledging that this Court "does not normally grant petitions for certiorari solely to review what purports to be an application of state law," Diaz strains to conform his petition to the only contrary

example he can find, *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which the Court summarily reversed a Tenth Circuit decision that effected what the Court termed a "blatant nullification of state law." *Id.* at 144-45 (1996). See Pet. 23-24. But the extraordinary "nullification" of state law at issue in *Leavitt* bore no resemblance to the commonplace statutory interpretation at issue here.

In *Leavitt*, the Tenth Circuit invalidated as unconstitutional a statutory provision regulating abortions *after* 20 weeks, and then struck down another provision of the same statute regulating abortions *up to* 20 weeks "on the ground that the [second] provision was not severable from" the first, and that "the Utah Legislature would not have wanted to regulate the later-term abortions unless it could regulate the earlier-term abortions as well." *Id.* at 138. The Tenth Circuit's conclusion that the two provisions were not severable was contradicted by an express statutory severability clause, which provided that "[t]he legislature hereby declares that it would have passed this part [of the statute] . . . irrespective of the fact that any one or more provision . . . be declared unconstitutional." Utah Code Ann. § 76-7-317 (1995) (*quoted in* Leavitt, 518 U.S. at 140).

Leavitt is readily distinguished from the present case on (at least) two grounds. First, the Tenth Circuit's decision in *Leavitt* invalidated the Utah statute on *federal* constitutional grounds, such that the Utah state courts were powerless to correct the federal court's error. There was no possible remedy for the Tenth Circuit's "total invalidation of a state-wide law" other than reversal by this Court. *Leavitt*, 518 U.S. at 144. Here, by contrast, the First Circuit's decision is not even binding on the Puerto Rico Supreme

Court, which is the ultimate arbiter of the meaning of Puerto Rico law. *Eisenstadt v. Baird*, 405 U.S. 438 (1972). A non-binding interpretation of a state statute by a federal court cannot reasonably be characterized as a "nullification" of state law.

Second, in *Leavitt* the Tenth Circuit's decision openly flouted the plain intention of the Utah legislature, as expressed in the very statute at issue. 518 U.S. at 144-45. Nothing remotely similar occurred here. As we demonstrate in part II below, it is *Diaz's* proposed interpretation of state law that would "blatantly nullify" the provision of Puerto Rico's Antitrust Act that expressly bars Diaz's lawsuit.

Unlike *Leavitt*, this action presents none of the indicia of an "extraordinary case," and the petition is thus a routine assertion of error by a disappointed litigant. As such, it would not warrant this Court's review even if petitioner's substantive arguments had merit.

II. The Court of Appeals' Decision Was Correct.

In any event, petitioner is wrong on the merits. The First Circuit was correct to conclude that the CCAA does not create a private right of action against allegedly deceptive trade practices, and Diaz has identified no grounds for reconsidering that conclusion.

A. Puerto Rico's Antitrust Act Expressly Denies A Private Right Of Action Against Deceptive Trade Practices, And The CCAA Does Not Purport To Create One.

First, Diaz's lawsuit is grounded on a statute, the Puerto Rico Antitrust Act, that on its face denies a

private right of action for the suit Diaz wishes to bring. As the petition concedes, Diaz "premised his cause of action on ... section 259" of the Act, which makes unlawful "[u]nfair methods of competition, and unfair or deceptive acts or practices in trade or commerce." Pet. 3; Pet. App. 30a. But § 268 of the Antitrust Act, which creates the private right of action for other violations of the Act, expressly *denies* a private right of action for violations of § 259. Pet. App. 30a-31a.

Diaz does not dispute that a § 259 action against Hyundai brought in his *individual* capacity would be barred by § 268. Instead, he argues that the CCAA permits him to do as a class representative what he concedes he cannot do as an individual: obtain a civil remedy for alleged violations of § 259. In effect, he claims that the CCAA creates a cause of action for violations of the Antitrust Act that exists independently of the cause of action created by the Act itself. But neither the text of the CCAA, its legislative history nor judicial precedent supports Diaz' extraordinary argument.

Diaz's CCAA argument is based on § 3342 of that Act, which "recognize[s]" the right of "consumers of goods and services . . . to file a class suit on behalf of said consumers . . . based on the Antitrust Act of the Commonwealth, §§ 257-274." Ibid. Diaz asserts that, because § 3342 identifies a "right" to file a class action based on the Antitrust Act, it must permit class actions based on *any part* of the Antitrust Act—including those provisions, like § 259, for which no individual right of action exists.

As the First Circuit held, however, § 3342's broad cross-reference to the entire Antitrust Act is insuffi-

cient to demonstrate "that the legislature intended to override section 268's more specific statement that section 259 does not support a private right of action." Pet. App. 6a. As a matter of statutory construction, it is a "commonplace . . . that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-85 (1992). Here, § 268 of the Antitrust Act specifically denies a private right of action for alleged violations of § 259(a). By contrast, neither § 3342 nor any other part of the CCAA makes any reference to § 259(a), to deceptive trade practices, or to any specific part of the Antitrust Act at all—instead merely referring generically to the entire statute. Such a general reference is not sufficient to supersede the specific denial of the cause of action in the Antitrust Act itself. *See, e.g., Preiser* v. *Rodriguez*, 411 U.S. 475, 490 (1973) (holding that a specific statute overrides an otherwise applicable general statute).

Moreover, contrary to Diaz's suggestion that "harmonizing" § 3342 and § 259(a) requires adoption of his interpretation, the opposite is true: the easiest way to "harmonize" the two statutes is to give effect to all their provisions, including § 259(a)'s denial of a private right of action. So interpreted, the CCAA *would* permit class actions for violations of the Antitrust Act for which the Act already affords a private right of action—§§ 258, 260, 262, 263, and 264. *See* 10 P.R. Laws Ann. § 268 (providing a right of action for violations of all provisions of the Antitrust Act except §§ 259 and 261). But it would deny such claims for violations of § 259(a)'s prohibition on deceptive practices.

Accordingly, the First Circuit's interpretation, by aligning the availability of class actions with the

availability of individual actions, eliminates any possible tension between the statutes and gives both provisions their natural reading.

B. The Puerto Rico Supreme Court's Decision in *Guzman* Does Not Even Purport To Address The Issue Presented Here.

The petition also relies heavily on the argument that the Puerto Rico Supreme Court's decision in *Guzman* (*Guzman Matias* v. *Vaqueria Tres Monjitas, Inc.*, 2006 TSPR 187 (P.R. Dec 14, 2006)) is an "intervening" and "conflicting" state-law precedent. Pet. 14-15, 25. But it is neither. An "intervening" case is one that becomes final after judgment has been entered below. *See Shoketsu Kinzoku Kogyo Kabushiki Co. v. Festo Corp.*, 520 U.S. 1111 (1997) (granting certiorari, vacating judgment, and remanding case in light of intervening decision). By contrast, *Guzman* was publicly available long before briefing and argument in the First Circuit were complete and was in fact argued to, and implicitly rejected by, the Court of Appeals. *See* Rep. Br. for Appellant at 14-17 (discussing *Guzman*). Thus, even if Diaz's interpretation of *Guzman* were correct, *Guzman* would not be an "intervening case" warranting a "grant, vacate, and remand" order.

In any event, Diaz's understanding of *Guzman* is plainly incorrect. *Guzman* nowhere even mentions § 259(a) or § 268 or their relationship to the CCAA.[2] The only question before the Puerto Rico Supreme

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[2] The excerpts of *Guzman* provided in the Petitioner's Appendix omit significant portions of the decision that clarify the context of the court's discussion of the CCAA. We have provided a complete translation of the decision at Respondent's Appendix A.

Court in that case was whether a purported class action satisfied the "numerosity" requirement of Rule 20.1 of the Puerto Rico Rules of Civil Procedure, which provides the requirements for certification of a class. Reading Rule 20.1 in light of the CCAA, the court concluded that the numerosity requirement should not be read to require joinder of additional plaintiffs at the certification stage. Resp. App. 20a-22a. All of the court's discussion of the CCAA and its purposes occurred in this very limited, strictly procedural context.

By contrast, the principal issue here—whether the CCAA creates a private right of action despite the denial of such a right in the Antitrust Act—is wholly absent from *Guzman*. In fact, Diaz has identified no decision by *any* court that supports his strained interpretation of Puerto Rico law. This Court should not be the first.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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March 2008

APPENDIX

APPENDIX A

MicroJuris Certified Translation MC-2007-270

Volume 169

2006 TSPR 187 -- **Guzmán Matías, Juarbe, Tres Monjitas Dairy Farm**

Information of the Document

Parties	Jose Guzman Matías and Rafael Juarbe De Jesus, on their own behalf and on behalf of a class comprised by all of the persons who are in the same situation, as described in the complaint, Petitioners and Plaintiffs v. **Tres Monjitas** Dairy Farm, Inc., et al., Defendants-Respondents
Date:	December 14, 2006
Citation:	2006 TSPR187, 169 DPR.
Court number:	CC-2004-811
Judge	Fiol Matta
Origin: IV	San Juan Judicial Region-Panel
Attorneys:	Attorney for the Petitioner: Mr. Domingo Donate Perez; Attorneys for the Respondent Mr. Samuel Torres Cortés, Mr. Juan M. Martinez Nárvaez, Mr. Luis G Martinez-Lloréns, Mr. Miguel Simonet Sierra; Office of the General Solicitor: Ms. Lizette Mejias Aviles, Deputy General Solicitor
Subjects:	Damages; Consumer; Civil Procedure

Majority Opinion; Fiol Matta

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OPINION OF THE COURT DELIVERED BY ASSOCIATE JUSTICE MRS. FIOL MATTA

San Juan, Puerto Rico, on December 14, 2006.

I.

In this case, the petitioners requested review of a judgment of the Court of Appeals, of July 30, 2004, which confirms a resolution of the First Instance Court denying to certify the above captioned case as a class suit. It is up to us to determine whether in light of Act Number 118 of June 25, 1971, which sets forth a class suit of goods and services consumers, and Rule 20 of Civil Procedure in Puerto Rico, this action must be certified as a class suit.

II.

On April 30, 1999, the petitioners presented a complaint for damages against **Tres Monjitas** Dairy Farm, Inc., Suiza Dairy, Corp. Borinquen Dairy, Inc., the Administrative Board of the Fund for the Development of the Milk Industry, Luis Fullana Morales, the Commonwealth of Puerto Rico, and others. The petitioners appeared "in their personal capacity... and on behalf of each and every person who constitutes a member of their class". They alleged; in synthesis, that for several years, prior to December 1998, the practice of adulterating fresh milk adding water and salt was being carried out in Puerto Rico. They argued that the respondents had knowledge or should have had knowledge of such practice. Likewise, they stated that the Commonwealth was negligent in not using adequate methods to detect the practice of milk adulteration. They adduced that they paid large amounts of money for an adulterated product that did

not meet requirements of integrity, salubrity, and hygiene demanded by the laws of the United States and Puerto Rico in order to be able to categorize milk as Grade A. They claimed, on their own behalf and on behalf of the consuming class of adulterated milk, $10,000 for each petitioner, for having paid for the unadulterated milk at a price higher than its fair value, and $10,000 for the mental and moral anguish suffered.

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After several interlocutory proceedings, on September 9, 1999, the petitioners presented a Request for Order to Certify a Class, pursuant to Act Number 118 of June 25, 1971, known as the Goods and Services Consumers Class Suit Act, 32 L.P.R.A. section 3341 - 3344, and Rule 20 of Civil Procedure of Puerto Rico, 32 L.P.R.A. Ap. III, R. 20. On September 14, 1999, the respondents opposed said request.

On July 10, 2002, the parties submitted to the consideration of the First Instance Court a Pre-Trial Conference Report Regarding Class Certification. Therein, the petitioners presented several amendments to their allegations: 1) they requested to reduce the claim for the excess paid for the milk from. ten thousand dollars ($10,000) claimed originally to "no less than two hundred dollars each"; 2) they requested to reduce the claim for physical damages and mental anguish, from ten thousand dollars ($10,000) to "no less than $100.00 each"; 3) it was specified that the definition of the class was that of consumers who had purchased adulterated milk from 1994 through 1998, different from a complaint in which no period whatsoever was stated; and 4) all of the employees of the defendants, the attorneys of the parties, and the

judges of the judicial system of Puerto Rico were excluded from the class.

Thus, on August 6 and 7, 2002, a hearing was held regarding the certification of the class. The First Instance Court requested all parties to present memorandums of law; and afterwards, on August 29, 2003, rendered a resolution and order, notified and filed in the docket on September 11, 2003, wherein it ruled that the petition for certification of class did not meet the *numerosity* requirement and denied it. The Court based itself that approximately 4 years had elapsed since the complaint was filed and there had not been a single person who had requested joining the class suit as a plaintiff. Timely, the petitioners filed Recourse for Certiorari before the Court of Appeals. Such forum agreed with the criteria of the First Instance Court and confirmed the appealed resolution.

Not in agreement with its ruling, the petitioners resort to this Court alleging that the Court of Appeals, as well as the First Instance Court, had erred "when concluding that it was not proper to certify the lawsuit as a class suit because, pursuant to the current state of law, the plaintiffs do not meet the numerosity requirement."

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Specifically, the petitioners state that the appealed Court committed a grave error of law when basing its ruling on that it was unknown "whether other citizens would have requested joinder as a party represented in the class suit". Likewise, they reject the contention of the Court of Appeals as to them meeting the numerosity requirement, the plaintiffs had to: a) present a reasonable estimate of the consumers they represent; b) present evidence regarding the potential

number of individuals who ingested the adulterated milk; c) qualify the number of milk consumers that there are in Puerto Rico and how many of them consumed adulterated milk from 1994 through 1998 and d) show the consumption habits of fresh milk of the members of the class.

Likewise, they stated that their complaint was presented pursuant to Act Number 118 of June 25, 1971, which, according to them, sets forth a more flexible standard to define a class. Pursuant to this perception, Act 118 has the purpose of "surpassing the limitations of Rule 20 of Civil Procedure", therefore it was only required to "determine whether a common matter of fact or law exists, and that the class suit is superior to other methods available". In the alternative, they alleged that they meet the "supplementary" requirements set forth by Rule 20. On the other hand, the respondents state that the consumer class suit must meet the requirements of Rule 20, notwithstanding the more flexible language of Act 118. Hence, they state that the petitioners do not meet any of the requirements of Rule 20, and, in the alternative, state that they do not meet the presuppositions of Act 118 either.

Through their allegations the petitioners propose that the class suit for goods and services consumers acknowledged by Act 118 is different than the general class suit of Rule 20. This lawsuit requires, therefore, to define the relationship between both provisions, in order to determine whether, in fact, this cause of action can be certified as a class action. The underlying controversy is to determine the standard to be followed by the courts in certifying a class suit suit [sic] when it is filed by goods and services consumers. Let us see.

III

The class suit constitutes a special form of representative litigation that allows a person or group of persons to sue on their own behalf and on behalf of other persons who are in a similar situation as this but that are not before the Court. Cuadrado Carrión v. Romero Barceló 120 D.P.R. 434, 445-46 (1988). In general terms, we have stated that this procedure advances three public interests, to wit, it promotes *judicial economy* by allowing the courts to adjudicate once and for all, all matters common to several litigations, thus avoiding multiple claims; allows us to do *justice* to the persons who would otherwise not obtain it, especially when the individual claims that are in controversy are not considerable; and therefore, those injured do not feel motivated to litigate; and to protect the parties from *inconsistent* judgments. Rivera Castillo v. Municipality of San Juan, 130 D.P.R., 683, 691 (1992); Cuadrado Carrión v. Romero Barceló, 120 D.P.R. 434 (1988) on page 446 (1988). *See also*, 7A Wright, Miller & Kane, Federal Practice and Procedure § 1754, on page 55 (2005).

This action, as many of our procedural provisions, has its origin in the Anglo-Saxon customary practices, where it appears as an exception to the maxim that states that each person is entitled to their "day in court". The general common law rule supposes that when resolving a controversy, all parties interested are to be present in court. However, British Courts of *equity* -which main function was to do justice surpassing the formalisms of *common law*, and- acknowledges that this general rule was too strict; that is why they developed a recourse to resolve matters

common to a group. Wright, Miller & Kane, *supra* § 1751, at pages 1922. Eventually, this pr. ice was introduced in the United States, and in 19[illegible], it became Rule 23 of the Federal Rules of Civil Procedure. 1

Said rule, drafted by Professor James Moore, establishes three forms or dimensions of a class action. Homburger, *State Class Actions and the Federal Rule*, 71 Columbia L. Rev. 609, 608-619 (1971). In the first place, there was a true class action, in other words, that which was comprised by persons who resort to the Court alleging joint rights among the members of the class. *Id. See also*, Wright, Miller & Kane, *supra* § 1752, at pages [19-22]. In the second place, there was a class suit known as hybrid, comprised by persons who resort to the court regarding joint facts regarding a specific property or fund. Homburger, *supra*, at page 605. Lastly, the spurious class suit was introduced, constituted by persons who are holders of joint rights, joined by a common question of law or fact. *Id* at page 606.

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According to *Moore*, each one of these actions had differed substantive effects. In essence, he asserted that the judgments entered in true and hybrid class suits constituted *res judicata* for all members of the class, while in the spurious class suit, the effects are limited to the persons joined as parties before the Court. *Id.* This interpretation, although not included in the drafting of Rule 20, was adopted by judicial interpretation by the federal courts. *Id.*

Not all treatisists agreed. Some argued that the limited effects of the spurious class suit adopted in the Federal procedural system defeated the purpose itself

of the class action. Thus, for example, one of them stated the following:

> Where, as in the case of spurious class suits, the conclusive effect of the class judgment has been repudiated, its efficacy has shriveled nearly to the vanishing point. As a result, subdivision 23 (a) is not a class suit functionally. Thus, the spurious class ensued, with which on its face offered the greatest promise of enlarging the scope of federal representative actions, has been judicially been divested of its great potential utility. Note, *Federal Class Actions: A Suggested Revision of Rule 23*, 46 Columbia L. Rev. 818, 825 (1946).

Further, these categories created confusion in the courts, which, with the intention of doing justice, converted typically spurious cases classes into any of the other classes or forgot to classify the class, thus creating the problems at the time of executing judgment. *See* Edward S Labowitz, *Class Actions in the Federal System and in California: Shattering the Impossible Dream*, 23 Buffalo Law Rev. 601, 635 (1973).

Thereafter, in Hansberry v. Lee 311 US 32 (1940), the Supreme Court of the United States accepted, in dicta, the possibility that the effect of the judgment may be extended to absentee members of a class · as occurs precisely in the spurious class suit -- if these were adequately represented by the members present. 2 Pursuant to this opinion, in 1966, Rule 23 of Federal Civil Procedure was revised to eliminate the artificial distinction between the different forms of class actions. In turn, it introduced the more practical concept in accordance to the inclusive nature of his procedural figure. Federal Rule of 1966, still current,

eliminated the above-mentioned categories and created a less technical procedural system more open to group claims. Wright, Miller & Kane, *supra* §1752.

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As is common knowledge, in Puerto Rico we have been progressively adopting the American Civil Procedure System. 3 Along that course, new Rules of the Code of Civil Procedure were enacted in 1943, these were basically a translation of the Federal Rules of Civil Procedure. Rafael Hernández Colón, Manual of Civil Procedure Law 4- 12 (1981). At that time, we introduced the figure of the class suit as drafted in Rule 23 of Federal Civil Procedure, in its 1938 version. Thus, to define a class pursuant to our procedural provisions of 1943, it was necessary to meet to general requirements, to wit, that the members of the class be so numerous that their appearance before the Court would be impossible and that there be adequate representation of all of the members of the class. In addition, the new rule established the three class classifications according to the juridical relationship of the members thereof, in other words, "true", "hybrid" and "spurious". 4

Likewise, when interpreting the rule, we followed the American trend of assigning different normative effects on each kind of class. Thus, in People v. Henneman, 69 D.P.R. 995, 986 [sic] (1949), in a footnote, we adopted the reasoning followed by federal jurisprudence as to these class suit categories. Later, in Caguas Lumber Yard, Inc. v. Superior Court, 96 D.P.R. 848 (1969) we reintegrated Professor Moore's theory, used in the federal courts, as to that the spurious class suit is only one mechanism of allowable joinder that serves those who are in a similar situa-

tion as the plaintiffs and could be able to join the suit, if they so desire. We also ruled that the judgment entered in such cases would not be conclusive for the members of the class that did not resort as parties to the court.

From the above stems the fact that class actions in Puerto Rico suffered the same fate as class actions in the United States before the Federal Rules of Procedure were amended in 1966. As pointed out above, in the United States, this interpretation had caused serious problems for filing group claims which did not represent joint or several rights, flaws that were corrected in the Federal Rules by the amendment of 1966.

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Within this context and in response to the need of making class actions a useful mechanism for consumers, our Legislature approved Act No. 118 of June 25, 1971, 32 L.P.R.A. 334, creating the goods and services consumer class suit. Evidently, when this law was passed, an exception to Rule 20.1 was established, providing that a technically "spurious" class could obtain a judgment which effects would be extended to all members of the class even if they were not present in court. Specifically, Act 118 acknowledged the rights of the goods and services consumers and of the Commonwealth of Puerto Rico, as *parens patriae*, to file a class suit on behalf of said consumers for damages."

This new legislation incorporated, in an abbreviated manner, several provisions of Federal Rule 23. In the first place, it requires that the court rule, as soon as possible, whether the lawsuit can continue as a class action, when there is a common question of fact and law among the allegedly affected consumers. This re-

quirement is similar to the one that has been named "commonality". 5 Likewise, Act 118 requires that the class suit be deemed superior to other available resources for the fair adjudication of the controversy. Lastly, Act 118 adopts the norms of Federal Rule 23 regarding notice to class members.

The objective of overcoming the flaws of Rule 20 by then, in force, is clearly set forth in the extremely inclusive language used by the legislator when defining the class as a group of people who have among them a "common question of fact or law". 32 LPRA §3344. This attempt also arises from the Joint Report of the Senate on S.B. 825 of April 15, 1971, which expressly points out that "the purpose of this measure is to make an addition to Rule 20 of the Civil Procedure in order to allow goods and services consumers to file a class suit" (emphasis ours)[sic].

The statement of motives of Act 118 highlights the legislator's concern regarding the limitation of the legal tools available to Puerto Rican consumers, pointing out that:

> Unfortunately, the remedies available for consumers to enforce their rights are still inadequate and the protection offered the consumer by the Consumers Service Administration ... 6 is not sufficient. .. For this reason, a suit filed directly by the consumer is warranted in such cases.

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In addition, Act 118 acknowledged the inherent difficulty of claiming small sums against big businesses. It is so recorded also in its statement of motives by stating that:

> **Usually, consumers claims involve such small amounts of money that they do not justify an individual suit; it is more economical and fair for essentially identical claims to be filed in a single class suit on behalf of all consumers who have been cheated and deceived ... This type of action compensates the inability of the individual consumer to litigate small individual losses by allowing that one or more representatives of a group of consumers with similar damages may bring a suit on behalf of a class ... The latter are forced to consider not only the direct economic loss of the class suit but also the publicity and public reaction with the ensuing loss of time, name or prestige. In the interest of discouraging the improper and deceitful conduct of the goods and services suppliers to consumers, the Legislature of Puerto Rico considers it of imperative necessity to establish the consumer class suit.**

This means that Act 118 intended, on the one hand, to extend the scope of Rule 20 overcoming the limitations imposed on the so called spurious class, and on the other, to authorize the consumers to go directly to Court to enforce their rights without having to be assisted by a government agency. In this sense, its objective is to eliminate all legal obstacles that might make it difficult for consumers to go to Court.

In short, the class suit established by the Goods and Services Consumer Class [Suit] Act had the purpose of overcoming the limitations of the old Rule 20 of Civil Procedure, allowing consumers, as well as the State, to go to Court and safeguard the rights of consumers. It constitutes, according to its statement of motives "an addition" to the general provisions of

Rule 20. Therefore, it did not necessarily create a different class suit but, in acknowledging the public interest to protect the goods and services consumers, it extended the scope of the class suit to them. This, in addition to the fact that Act 118 does not establish specific criteria to define what constitutes a class, means that at the time of certifying a class, the courts must examine whether they meet, not only the general definition of Act 118, but also the specific requirements of Rule 20.

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We must highlight that Rule 20, now in force, is the 1979 amended version, after the promulgation of Act 118. That year, Rule 20 was revised entirely to make it similar to the Federal Civil Procedure Rule 23 adopted in 1966 and allow, therefore, the filing of typically spurious class suits. Obviously, the intent was to stretch the definition as well as the scope of class actions so that they would be more accessible to other groups that, just as goods and services consumers, would not have any other means and, as a practical matter, opportunity to assert their rights in court. 7[.]

It is necessary to recognize that when amending Rule 20, Act 118 lost part of its initial relevance. Nonetheless, this does not mean that it is dead letter. When the new Rule 20 was passed, our Legislature did not abolish the Consumer Class suit Act. It survived as a specific tool that grants consumers a broad and effective means to protect their rights. Although it is a section similar to that of Rule 20, the consumer class suit allows to grant additional remedies, among these, the *injunction,* and acknowledging the consumers' right to file suit pursuant to the Monopoly

Act of the Commonwealth of Puerto Rico, 10 L.P.R.A. section 257 et seq.

As we stated above, Act 118 authorizes the goods and services consumers to resort to the court to enforce their rights, allowing them to avoid obstacles which, at times may be presented in bureaucracies in the agencies called upon to defend them. Act 118, thus, constitutes, a mandate for the courts to open the doors to consumers injured by the legal practices of goods and service providers.

This mandate was approved as recently as in 2002, when approving Act 269 of November 16 of that year, which amended Act 118 to clarify the primary jurisdiction of the First Instance Court in this kind of litigation. Therein, the legislator stated in its statement of motives that:

> The protection to the goods and services consumers is invested of the highest public interest. Through this law, the Legislator solidifies the cause of action provided by Act 118 when clarifying that the First Instance Court would have exclusive jurisdiction because it is dealing with a special cause of action.

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In summary, when evaluating the discretion of the First Instance Court at the moment of certifying a class, we cannot set aside the mandate of the Legislative Assembly of opening the way for consumers.

From all of the above, it is necessary to highlight the following points. In the first place, Act 118 did not create any form of class suit different than what was established by Rule 20, rather, it extended the remedies available to the goods and services consumers. In

turn, the applicable requirements to certify a class of goods and services consumers, we must emphasize the requirement of "predominance and superiority" and "commonality", which, although present in Rule 20, arc the only ones expressly provided in Act 118. This means that when class actions are presented pursuant to this Act, we must first attend those two requirements to determine whether an alleged class is a creditor to the remedies established therein. Once the requirements of "predominance and superiority" and "commonality" are met, it is necessary to examine whether the supplementary requirements of Rule 20 are met, in other words, "numerosity, typification and adequate representation.[sic] However, when applying these requirements we are called upon to interpret them with the spirit of liberality and inclusion inspired by At [sic] 118.

III [sic]

Having clarified the above, let us examine the particular facts of this case, interpreting the criteria of "predominance and superiority" provided by Act 118and the other criteria of Rule 20 of Civil Procedure, with the liberality required by Act 118. There is no doubt that it is within a broad framework of discretion of the First Instance Court to determine whether a lawsuit qualifies as a class action. This commonly means that the reviewing courts should not intervene in that decision; unless it is proved that the instance forum has abused its discretion. Meléndez Vega v. Caribbean Intl. News, 151 D.P.R. 649,664 (2000); Lluch v. España Service Sta., 117 D.P.R. 729, 745 (1986); Valencia. Ex parte, 116 D.P.R. 909, 913 (1986); Ortiz Rivera v. Agostini, 92 D.P.R. 187, 193 (1965), José Cuevas Segarra, Law Treaty for Civil Procedure, 396. Nevertheless, as we

pointed out earlier, in the particular case of the class suit of goods and services consumers, said discretion is limited by the public interest in favor of the consumers, as stated by Act 118. Not acting this way would attempt against a clear and reiterated legislative intention.

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Rule 20.1 of Civil Procedure sets forth four requirements in order to be able to file a class suit:

> (1) that the class be so numerous that the joinder of all of the members is deemed impracticable, in other words, *numerosity*;
> (2) that there are questions of fact or law common to the class, in other words, commonality;
> (3) that the claims of the representatives be typical of the claims of the class, in other words, typification;
> (4) that the representatives fairly and adequately protect the interest of the class.

In addition, in order for the certification of a suit to be proper as a class suit, it is equally necessary to meet, at least, one of the requirements of Rule 20.2 of Civil Procedure; among these alternative requirements, Act 118 itself demands to meet specifically with the requirement of "predominance and superiority" contained in Rule 20.2 (c) in a manner very similar to language used to define the disappeared spurious class suit, this paragraph (c) defines a sustainable class as that in which "questions of fact or law common to the members of the class predominate over any matters that only affect individual members".

Commonality, predominance, and superiority

The requirements of "commonality" and "predominance and superiority" are intimately related and we will examine them together. The requirement that there be a question of fact or law common to the class is similar to what is required for joinder and intervention in Rules 17 and 21 of Civil Procedure, 32 L.P.R.A. Ap. III, with the difference that Rule 20 does not demand the questions of fact or a law to arise from the same act, omission or event. In addition, this requirement is present in Act 118 in its section 4, where it is provided that "the Court... shall determine whether a common question of fact and law exists and that the class suit is superior to the methods available for the fair and efficient adjudication of the controversy", 32 L.P.R.A. section 3344.

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On the other hand, as we stated in Cuadrado Carrión v. Romero Barceló, 120 D.P.R. 434 (1988) on page 451, there is a conceptual statement regarding the requirements of "impracticability" and "commonality". Both referred to those who comprise a class, in other words, to the absentee members of the represented class, while the requirements of "typification" and "adequate representation", discuss hereinbelow, describe the characteristics that the representatives must necessarily possess.

To meet the "commonality" requirement, it is not necessary that the questions set forth be completely identical. Forbush v. JC Penney Co., 994 F.2d 1101 (1993) Port Authority Police Benev. Assn. v. Port Authority, 698 F.2d 150 (1983); Abramenlovitz v. Ahern, 96 F.D.R. 208 (1982). The concept is qualitative and not quantitive [sic]; it only requires that what is claimed requires to rule on a question of fact or law

common to those represented, and as established by Rule 20.2 (C), as well as Act 118, it is common to the members of the class "predominate over any questions that affect... the members individually" and the class suit be the superior means to adjudicate the controversy. *See* Wright, Miller & Kane *supra* §§ 1763 and 1766. This maxim does not apply to suppositions or instances provided by Rule 20.2 (a) and (b), Cuadrado Carrión v. Romero Barceló, 120 D.P.R. 434 (1988) at page 451.

The petitioners allege that there are among the members of the class whom they intend to represent common questions of facts, to wit, the alleged sales of adulterated milk by co-defendants **Tres Monjitas** and Suiza to fresh milk consumers of Puerto Rico. They adduce, and the First Instance Court itself admits, that in order to certify the class. It is not necessary to show that adulterated milk was, in fact sold, nor the damages that, if consumed, it would have caused. These rulings correspond to a subsequent evidentiary phase before the First Instance Court. At the stage in which the proceedings are, it is only necessary to show that the alleged conduct of the defendants is common to the members of the class, as defined by its representatives. Evidently, the arguments of the respondents as to that in Puerto Rico, "adulterated milk was never sold" or as to that they are the ones injured by the fraud of adulterated milk, are excessive at this stage of the litigation.

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On the other hand, we have no doubt that in this case, the cause of action is superior to other means to resolve the controversy. To attend to the requirement of superiority, it is necessary to have present the

guidelines proposed by Rule 20.2 (c), in other words, "the interest of the members of the class in individually controlling the prosecution or defense of separate suits; the nature and scope of any litigation pertaining to the controversy already commenced by, or against, the members of a class; the desirability or not of concentrating the process of the claims in the specific forum; the difficulties that would probably arise in the prosecution of a class suit." Let us see.

In terms of the individual interest of the members of the proposed class, we must state that the lack of interest of presenting individual claims to recover the excess paid in damages as a consequence of buying adulterated milk is evident. This lack of interest may be logically inferred from the nature of the claim and how complicated a litigation would be where technical matters regarding milk quality must be proven. In addition, the individual loss of the members of the class is relatively small and unattractive to obtain individual legal representation. Likewise, even supposing that the amount to be claimed individually were substantial, it would be so extremely impractical and onerous to render justice that each consumer have to resort individually before the courts to demand compensation as a consequence of the consumption of adulterated milk. It does not appear from the file either that there is any other lawsuit similar to this one that would provoke an impediment as to the second and third criteria of paragraph (c) of Rule 20.2. Lastly, as to the manageability of the lawsuit, we must state that the high number of litigants cannot constitute in itself an obstacle not to certify a class. Said argument is contrary to the spirit of Act 118 itself and goes against the internal logic of Rule 20, which requires the class to be numerous.

From the above, we will briefly examine the other general requirements of Rule 20 applicable to this case.

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B. Numerosity

Rule 20 does not offer parameters as to what constitutes a numerous class. This explains why the jurisprudence 11uctuates in its interpretation. However, there is consensus that the number of persons that comprise a class is not decisive in the determination of "impracticability"; this is a matter to rule case by case, according to the circumstances. Cuadrado Carrión v. Romero Barceló 120 D.P.R. 434 (1988) at page 449, *citing* DeMarcano v. Edens, 390 F. 2d 836 (1968); Swanson v. American Consumer Industries lnc., 415 F. 2d 1326 (1969); Cash v. Swifton Land Corp., 434 F. 2d 569 (1970); Ballard v. Blue Shield of Southern W. Va., Inc., 543 F. 2d 1075 (1976); Weiss v. York Hosp. 75 745 F. 2d 786 (3rd Cir. 1984). *See also* Wright, Miller & Kane, *supra* § 1762. Impracticability does not mean either that he/she who requests certification must show that joinder is impossible, Cuadrado [Carrión] v. Romero Barceló, 120 D.P.R. 434 (1988), at page 450; Samuel v. University of Pittsburgh, 56 F.D.R. 435 (1972); it is enough that he/she show that such action would create serious inconveniences and obstacles in the prosecution of the suit. Cuadrado Carrión v. Romero Barceló 120 D.P.R. 434 (1988), at page 450 citing Union Pacific Railroad v. Woodahl, 308 F. Supp, 1002 (1970). See Robidoux v. Celan, 9117 F.2d 931, 935 (1993).

We have further acknowledged other elements together with this numeric factor aid in the analysis. To such effects, we state, for example, geographical

dispersion, the possibility that the members of the class may be identified for purposes of documentation, the nature of the suit, the amount of the claim, and the ability of each member to enforce his/her rights individually; Cuadrado Carrión v. Romero Barceló, 120 D.P.R. 434 (1988) at page 450.

The initial ruling of whether a suit may succeed as a class suit cannot rely on mere speculation, the weight of evidence should fall on the promoter of the certification. This does not mean, however, that such party must allege or prove the exact number of the members of the class. It is sufficient to present any evidence or reasonable estimate of the potential number of individuals represented. *In citing* Garcia v. Rush Presbyterian - St. Luke's Medical Ctr., 80 F.D.R. 254, 268 (1978) *see* Vergara v. Hampton 581 F.2d 1281 (1993).

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In this case, the First Instance Court concluded that "the potential class represented by Guzman and Juarbe is numerous. Based on an analysis of milk consumption in the country, we have no doubt that there is a possibility that a large group of citizens could be part of a class..." However, the Court also stated that "after four years of having filing the action at bar have elapsed, we do not have knowledge of Puerto Rican citizens that may have formally requested to join as a represented party of the class." Having stated this, it concluded that it was not proper to convert the litigation in a class suit because the requirement of "numerosity" had not been met.

There is no controversy whatsoever with the fact that no other consumer, aside from the plaintiffs, have requested to intervene in the lawsuit at bar. However,

neither Rule 20, nor much less Act 118, requires joinder. Moreover, if it were required for other consumers to enter into the lawsuit to achieve to certify the class, it would place us in a similar situation, although not identical, to what happened when the prior version of Rule 20 was current. The express objective of Act 118, as we explained, is to urge such claims that because they deal with insignificant amounts at an individual level do not really motivate the appearance of consuming individual consumers to court, but at a collective or group level becomes very important. To allow a court to demand at its discretion the intervention of other plaintiffs as a condition to certify a class defeats the purpose itself of this law.

Equally contrary to Act 118 is the conclusion of the Court of Appeals, in the sense that it would be "impossible to identify the members of the alleged class... for purposes of joinder" it was "forceful... to infer that the requirement of numerosity is not present in this case". Again, this interpretation of the consumer class suit returns us to the state of law prior to the legal reforms that we have discussed and is contrary to the public policy set forth in Act 118. Nothing in Act 118, or the current Rule 20 suggests that the potential members of a class must be identified" or specifically numbered. As we previously stated, it is not even necessary to provide an exact number of the members of the class, being sufficient to submit a reasonable estimate. In this sense, the petitioners argue correctly that the criteria adopted by the judgment appealed would exclude from the definition of class most of the possible consumer litigations. Act 118 responds, precisely to the difficulty in being able to identify consumers that would have paid provision goods at overprice, such as coffee, bread, bottled wa-

ter, and others. To establish such a strict standard of "numerocity" [sic] that would deprive of remedy the person who this law intended to protect and would place the large goods and services providers in a very advantageous position, contrary to the express objective of Act 118.

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Through the testimony of the defendants themselves during the hearing for certification of the class, a reasonable estimate of the potential number of members of the class was presented. The defendants stated how much fresh milk cartons were sold per year and the estimate of per capita consumption, which would allow to clearly deduct how numerous the class of consumers represented in the suit is.

Hence, with the testimony of Mr. Luis Fullana Morales, Leovigildo Méndez and Jose Meléndez Rodriguez, several very important facts were established. In the first place, it was established that the defendant companies sold and elaborated all of the milk that is consumed in Puerto Rico. It was also shown that during the years 1993 and 1994, codefendant Suiza and Tres Monjitas sold 311,820,081 quarts of fresh milk. It is estimated that Puerto Ricans consume around 90 quarts per capita. Based on the same data, the plaintiff estimated 3,464,668 milk consumers in Puerto Rico.

C. Typification

The claims or defenses of the representatives must be typical of the claims or defenses of the class. This criteria, similar to that of "commonality", deals that one of the characteristics the plaintiffs must possess. The "typification" requirement deals specifically with the relationship between the claims of the plaintiffs and

those of the class that is intended to represent them. Certainly, this requirement is also related to the fact that those who represent the class must adequately defend the interests of its members.

When the claim of the plaintiffs is typical, the plaintiffs and other members of the class have an interest in prevailing in the shared claim; thus, when the representative defends their interests, they advance the interests of the whole class. On occasion, as occurred in Cuadrado Carrión, 120 D.P.R. 434 (1988) the cause of action caused the interests of some of the members of the class to be inherently opposed. In this case, we ruled that a supposed class that alleged political discrimination, but that was comprised of members of both political parties, did not meet the requirement of typification due to the crossed interests of the members of a class.

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By its own nature, the determination of typification operates case by case. Jurisprudence and Doctrine accept that the class does not necessarily have to be comprised by persons with identical claims in order to produce a circumstance of impeccable uniformity. Cuadrado Carrión 120 D.P.R. 434 (1988) at page 454. In this case, there is no doubt that the plaintiffs meet this requirement. Neither the allegations of the parties, nor from the files does it appear that there is a possibility of a conflict among the members of the proposed class. The members of the class do not represent any allegation that would result contrary or opposed to the typical claim of adulterated milk consumers. We cannot logically infer, nor have the parties proposed, any conflict between the claims that

the plaintiffs make and others that other defrauded milk consumers could make.

B [sic] Adequate representation

This last requirement enjoys a special relevance because it has its constitutional genesis in due process of law. After all, "[o]nly adequate representation of the interests of the absent members avoids the class suit to be unconstitutional by ensuring that due process of law is met." Cuadrado Carrión. This requirement ensures the demand that every person have their "day in court" and that no one can be affected by an *in personam* judgment in a proceeding in which it has not been a party. *Id. Citing* Pennoyer v. Neff 95 US 714 (1877).

Currently, the main factors and differential notes of the analysis of "adequate representation" are concentrated in (1) *the absence of conflict*, and (2) the guarantees of *aggressive and vigorous litigation*. When the claims or defenses of those represented are not typical of the claims or defenses of the class, there is an inherent problem of conflict, because the requirement of minimum adverse interests characterizing our adjudicative law is not met. When the mentioned danger does not exist, the analysis of vigorous prosecution emphasizes on the characteristics of the attorney of the representatives of the class. Cuadrado Carrión 120 D.P.R. 434 (1988) at page 455.

As we have already stated, we have not found conflict in the allegations of the plaintiffs. Regarding the capacity of their legal representation and the interest it shows in continuing with the lawsuit, it is necessary to state the following. The respondents themselves state that "they do not question the academic background and experience of said attorneys". 9 However,

they have raised objections in terms of the legal strategy followed by the plaintiffs and allege that the attorneys only pursue to increase their fees through a class action. They specifically state that the plaintiffs have "decreased" the original claim of $20,000 to no less than $300 for each defendant, they noted that under any "any scheme of possible compensation in this case, the only persons that will benefit...are the legal representatives of the petitioner...".

Regarding the above, we must state, in the first place, that the differences in terms of legal strategies cannot presuppose a sustainable argument against classification. The legal counsel of the plaintiffs in this case has shown, at least, aggressiveness and interest in the lawsuit, which is shown by the presentation of this suit before the Supreme Court itself. Regarding the changing amount, we observe that in the original claim, a fixed amount was requested; while in the second, a minimum amount was alluded. This, in itself, does not evidence inadequate representation of the plaintiffs.

Regarding what is alleged by the respondents questioning the fact that the attorneys will benefit from the outcome of the lawsuit, several brief comments must be stated. Act 118 had the purpose of facilitating lawsuits of this kind, establishing, among others, a minimum amount of 25% of the damages adjudicated as attorneys' fees. This, evidently, with the objective of promoting attorneys to be willing to commit their time and effort of this kind of claim. Otherwise, few legal professionals would be willing to invest their capacity and time in exiguous claims of individual consumers. 10[.]

IV

We conclude that the class suit proposed by the petitioners met all of the requirements provided by Rule 20 of Civil Procedure, and therefore with the requirements of Act 118 as to identity of the class. In other words, how the petitioner shows that in the picture of the class proposed, the common questions predominate over the individual ones and the class suit constitutes a mean superior to others to attend the these claims. In addition, it clearly appears from the file that the proposed class meets the criteria of "numerosity" as defined by Rule 20. Lastly, the comments related to the need of duly defending the interests of the proposed class (numerocity [sic] and adequate representation) were proven via the pleadings of the parties, the nature of the claim presented and the Leo Evers of the petition is up to the present. We then rule that the First Instance Court abused its discretion by not certifying the class proposed by the petitioners. Therefore, the Court of Appeals erred in confirming the instance ruling.

In light of the above, the sentence appealed is remanded and the case is returned to the First Instance Court to continue proceedings pursuant to this ruling.

Judgment will be entered accordingly.

Liana Fiol Matta
Associate Judge

End Notes

[1] [Omitted from original submitted]

[2] [Omitted from original submitted]

[3] Before the American invasion in 1898, in Puerto Rico applied the Code of Civil Procedure of 1886 which remained in force until August 16, 1899, when the Military Government issued the Order # 118 which reorganized the judiciary branch and"[sic] provided norms regarding judicial, civil and criminal procedures. This Order established certain procedural rules and recognized the force and effect of many others of the prior Code of Civil Procedure that remained partially in effect. On March 10, 1904 the Code of Civil Procedure of 1904 was approved, it was prepared by the so-called "Commission of Codes", in charge of harmonizing our legal system with the new political regime. Rafael Hernandez Colon, Manual of Civil Procedure Law 4-12 (1981).

[4] [Omitted from original submitted]

[5] This is the same requirement of Rule 20.1 (2) of the Puerto Rico Civil Procedure.

[6] Predecessor of the Department of Consumer Affairs.

[7] Footnote omitted (about real, hybrid and spurious classes)

[8] [Omitted from original submitted]

[9] [Omitted from original submitted]

[10] [Omitted from original submitted]

No.: 2007-270 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the

best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Fourteen (14) pages, including this certification page, and does not contain changes of erasures.

In Guaynabo, Puerto Rico, today, Tuesday, February 06, 2007.

/s/

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